

Clarke County

PLANNING COMMISSION REGULAR MEETING MINUTES 2011 September 2



A regular meeting of the Planning Commission of Clarke County, Virginia, was held at the Town/County Joint Government Center, Berryville, Virginia, on Friday, 2011 September 2.

Vice Chair Caldwell called the meeting to order at 9:04 a.m.

ATTENDANCE

Present: Anne Caldwell, Vice Chair; Clay Brumback, A.R. Dunning, Jr., Scott Kreider, Tom McFillen, Bev McKay, Cliff Nelson, Chip Steinmetz, Richard Thuss, and Bob Wade
Absent: George Ohrstrom, II; Chair
Staff present: Charles Johnston, AICP, Planning Director; and Jesse Russell, Zoning Administrator

APPROVAL OF AGENDA

The Commission voted unanimously to approve the agenda.

Yes: Brumback, Caldwell, Dunning, Kreider, McFillen (moved), McKay (seconded), Nelson, Steinmetz, Thuss, and Wade
No: No one
Absent: Ohrstrom

APPROVAL OF MINUTES

The Commission voted unanimously to approve the briefing meeting minutes of 2011 June 28.

Yes: Brumback, Caldwell, Dunning, Kreider, McFillen, McKay (seconded), Nelson (moved), Steinmetz, Thuss, and Wade
No: No one
Absent: Ohrstrom

The Commission voted unanimously to approve the regular meeting minutes of 2011 July 1.

Yes: Brumback, Caldwell, Dunning, Kreider, McFillen (moved), McKay, Nelson (seconded), Steinmetz, Thuss, and Wade
No: No one
Absent: Ohrstrom

The Vice Chair recognized today as the last meeting for Commissioner Wade. She read a Resolution of appreciation for Mr. Wade's service. The Commission voted to approve the Resolution.

Yes: Brumback, Caldwell, Dunning (moved), Kreider, McFillen, McKay, Nelson (seconded), Steinmetz, Thuss, and Wade (abstained)
No: No one
Absent: Ohrstrom

Mr. Wade expressed his appreciation for the Resolution and for the support and friendship of Commission members.

MAJOR SUBDIVISION – CONT'D PUBLIC HEARING

H. Robert Showers, Attorney for Salvation Army (Ron Mislowsky, Engineer, PHR&A Agent) requests approval for a 22-lot subdivision for Tax Map Parcels 13-((A))-13 [6 tracts] and 13-((A))-56 located at 642 Westwood Road, Russell Election District, zoned Agricultural Open-Space-Conservation (AOC). S-08-01

Mr. Russell reviewed what had and had not been submitted for this request. He said the applicant's attorney had just received approval from the applicant's board to proceed with the Karst Plan. He said the Consumer Disclosure Statement had not been received, but the Deed of Dedication for public and private roads had been received. Commissioner Dunning asked what the karst plan would address. Mr. Russell said the Karst Plan would follow the standards for such plans as listed in the Zoning Ordinance. The basic purpose of the Plan is to identify breaks in the limestone bedrock under proposed drain fields and roads, as such breaks could be a conduit for the pollution of groundwater resources.

John Farrell, McCandlish & Lillard, legal counsel representing the Salvation Army, was present and stated that it had taken awhile to get a qualified consultant on contract for the Karst Plan and that this company, ECS, has made some initial contacts with reviewing entities. Mr. Farrell said that this Plan should be completed by the end of September for submission to the County's engineer. He asked the Commission to continue the public hearing and postpone action on this request until its November meeting, which should allow sufficient time for the County's staff to review this Karst Plan. He said he would include language in the Deed of Dedication for roads to explicitly prohibit the use of the access easement between this property and Route 7 and to preclude its connection to the proposed roads in the subdivision. He asked Mr. Russell for any comments that he or the County's attorney may have regarding the Deed of Dedication draft that had been submitted.

Mr. Russell said he would get Mr. Mitchell to review the Deed of Dedication even though it appeared to be a standard document.

Mr. Farrell said that he believed that not all sections of the Consumer Disclosure Statement should be required, because for example, the Applicant would not be constructing the residences and those sections would not be applicable.

The Vice-Chair said that she would like to see the matter carried over to December so as to ensure sufficient time for review of submitted materials.

Mr. Farrell asked if the matter could be placed on the Commission's November agenda for a status report and the possibility of action if all matters have been addressed.

Commissioner McFillen said the owners of lots 16 through 21 should not be allowed to grant access easements or a right of way across their properties to connect the east and west access roads.

Mr. Farrell said he would include such text in the Deed of Dedication, but that he thought it would be appropriate for such owners to be able to grant a permanent intermittent access for farming activities.

Mr. Russell said he would ask Mr. Mitchell to pay special attention to this additional language to be included in the Deed of Dedication.

The Vice-Chair asked if there were any comments from the public. There being no public comments, she

called for a motion.

The Commission voted unanimously to continue the public hearing and postpone action on the request and to establish the following schedule for action:

1. The Planning Commission will take final action on the subdivision application at its December 2, 2011 meeting, based upon what the applicant has filed in support of the application at that time.
2. It is the intention of the Planning Commission that no extension beyond December 2 will be granted with respect to this application.
3. The applicant shall file its required karst plan with the County on or before October 17, 2011, to provide enough time for the plan to be adequately reviewed by the County's engineer and County staff prior to the December 2, 2011 Planning Commission meeting.
4. The applicant shall file with the County, on or before October 17, 2011, a Consumer Disclosure Statement in accordance with Section 6 of the County's Subdivision Ordinance.
5. The applicant shall file with the County, on or before October 17, 2011, a final version of a Deed of Dedication in accordance with Section 6 of the County's Subdivision Ordinance.
6. The request can be placed on the agenda of the Commission's November meeting for a status report and action if all requirements have been met.

Yes: Brumback, Caldwell, Dunning, Kreider, McFillen, McKay (moved), Nelson, Steinmetz, Thuss, and Wade (seconded)

No: No one

Absent: Ohrstrom

MINOR SUBDIVISION

Charles E. Dominy (Ben Brashears, Agent) requests approval for a two-lot subdivision and maximum lot size exception for Tax Map #21-((A))-79 located at 196 Bellevue Lane, White Post Election District, zoned Agricultural-Open Space-Conservation (AOC). MS-11-05, MLSE-11-02

Mr. Russell reviewed the application and the information provided in the staff report. He recommended approval of the request on condition that a Deed of Dedication is submitted to the Zoning Administrator, including the existing road maintenance agreement, before the Administrator signs the Record Plat.

Commissioner McKay noted that the proposed property line splits the existing access easement, Bellevue Lane, in an asymmetrical fashion. He asked if was a reasonable division of the access easement.

Mr. Russell said the relative location of property lines and access easements varies from property to property and that he did not believe this would create a problem.

Commissioner Thuss noted that the existing garage appears to encroach on the existing access easement.

Mr. Russell said that this circumstance pre-dated the application and was not created by this application.

Commissioner Dunning recalled that the previous subdivision of this property precluded new driveways onto Old Winchester Road, Route 723 so that access would only be via Bellevue Lane. He said he would like the same provision added to this subdivision.

Mr. Charles Dominy, the applicant, was present and agreed to this provision.

Hearing no further discussion, the Vice-Chair called for a motion.

The Commission voted to approve this request with the following conditions:

1. access to lot one and any future lots subdivided off of lot one would be via Bellevue Lane and not off Old Winchester Road, Route 723;
2. submission of a Deed of Dedication to the Zoning Administrator, including the existing road maintenance agreement, before the Administrator signs the Record Plat.

Yes: Brumback, Caldwell, Dunning (moved), Kreider, McFillen (seconded), McKay, Nelson, Steinmetz, Thuss, and Wade

No: No one

Absent: Ohrstrom

MINOR SUBDIVISION

Mary Jane Salter, Trustee requests approval for a two-lot subdivision for Tax Map #28-((A))-20 located at 13043 Lord Fairfax Highway, White Post Election District, zoned Agricultural-Open Space-Conservation (AOC). MS-11-06

Mr. Russell reviewed the application and the information provided in the staff report. He said this subdivision would create a 2.3-acre lot around an existing house and create a 93-acre residual tract. He said the Planning Commission approved this subdivision in November of 2006, but the applicant at that time (the current applicant's father) did not record the subdivision within six months of approval as required by the Code of Virginia. Mr. Russell said that a resistivity test was conducted for the new reserve drain field on Lot 1 (93.4 acres). He said the other drain fields exist and therefore did not have to be tested. The resistivity test on Lot 1 reserve field indicated several anomalies and County geotechnical engineer, Dan Rom, recommended that more testing be conducted on this site. The applicant's geotechnical engineer conducted more tests, which Mr. Rom has reviewed and determined that were not significant anomalies. Mr. Russell recommended approval of the request.

Commissioner Dunning stated that the proposed 2.3 ac. lot is located in such a way that a gap is being left between the subject lot and an existing 2+ ac. lot just to the south along Route 340 and thus creating an area of land too small to be of useful agricultural purpose.

The Vice-Chair said this issue was discussed at the briefing meeting.

Mr. Russell said that due to poor soils, drain fields could not be found in the gap areas when the subdivision was first reviewed in 2006.

Bob Marshall, soil scientist for the applicant, said the drain fields meeting the standards for alternative drain fields have been submitted for Health Department approval for each of the gap areas on either side of 13183 Lord Fairfax Highway.

Commissioner Dunning said that this is not good planning, as it would result in a strip of four houses on Route 340. He said that this arrangement of lots should not have been brought to the Commission for review. He said he wanted any approval to be conditioned on the lots being reconfigured so that lot 2 and the lot for 13183 Lord Fairfax Highway are connected.

Stuart Dunn, surveyor for the applicant, asked what would happen if the Health Department did not approve relocated drain fields.

Mr. Russell said there could be a boundary line adjustment to resolve such an issue.

Commissioner Dunning said that perhaps there could be a different means of access.

Commissioner Thuss asked if lot 2 could be expanded.

Mr. Russell said that this was possible.

Commissioner McFillen asked is there a time limit on considering additional subdivisions of the property?

Mr. Russell said “no”, there is only a 12 month time limit for resubmittal of denied subdivision applications.

Commissioner Dunning said that he thought there were time limits.

Ms. Mary Jane Salter, the applicant, said she did plan to submit future subdivisions, but was not prepared to at this time.

Commissioner Nelson asked if action could be deferred to the November meeting.

Mr. Russell said the Commission has 60 days for review.

Commissioner Brumback said he was concerned with applying a condition requiring reconfiguration without knowing there would be Health Department approval.

Mr. Russell said there could be conditional approval that any future subdivision of lot 1 would fill the previously discussed gaps.

Mr. Dunn said the gaps could be fenced off.

Commissioner Dunning said that would make the situation worse.

Commissioner Wade said that while he agreed with Commissioner Dunning about the configuration, the applicant appears to have acted in good faith and in accord with county ordinances, and therefore the Commission should act on the request as presented.

Commissioner McKay asked if this request was not the same as was previously approved in 2006.

Mr. Russell said these issues were raised in 2006, but the new state mandate for localities to accept alternative technology drain fields would allow the gaps to be filled.

Commissioner Brumback asked what the status of Health Department approval is on these alternative drain fields.

Mr. Marshall said the Health Department had given preliminary approval, and that it could not give formal approval until there was an actual subdivision application filed.

Commissioner Thuss said he agreed with Commissioner Dunning's concerns, but that the applicant had followed the process and action taken.

Mr. Russell asked if there should be a condition requiring future lots to be located in the gap areas.

Commissioners Thuss and Kreider said that lot location should be addressed with any future application.

Hearing no further discussion, the Vice-Chair called for a motion.

The Commission voted unanimously to approve this request as submitted:

Yes: Brumback, Caldwell, Kreider (seconded), McFillen, McKay, Thuss (moved), and Wade
No: Dunning and Nelson
Abstain: Steinmetz
Absent: Ohrstrom

TEXT AMENDMENT – PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance:

Sections 3-A-1-a-2, 3-A-2-a-2, 3-A-3-a-2, *Accessory Uses in the AOC, FOC, and Rural Residential Zoning Districts*, so as to allow 'Structures up to 80 feet high for noncommercial telecommunication antennae';

Section 3-A-1-a-3 and 3-A-2-a-3, *Special Uses in the AOC and FOC Zoning Districts*, so as to add the adjective 'commercial' when describing telecommunication monopoles over 50 feet in height that are currently allowed as a Special Use in these Zoning Districts;

Sections 3-A-1-f and 3-A-2-f, *Vegetated Property Buffer in the AOC and FOC Zoning Districts*, so as to allow structures for noncommercial telecommunication antennae in required Vegetative Property Buffers provided that vegetation may be cut only within a six foot radius of the structure, but with no land disturbance;

Section 3-C-2, *Supplementary Regulations for Uses in Various Districts*, so as establish standards for 'Structures up to 80 feet high for noncommercial telecommunication antennae';

Section 9-B-41, *definition of the term "Commercial"*: so as to change the definition from "Any wholesale, retail, or service business activity established to carry on trade for a profit." to "Any activity conducted with the intent of realizing a profit from the sale of goods or services to others. The term 'Noncommercial' means any activity conducted with the intent of not realizing a profit from the sale of goods or services to others. " TA-11-05

Mr. Johnston explained the request and reviewed the modifications recommended by the Commission's special committee for this application (Caldwell, McFillen, McKay, Thuss), as described in the staff report.

Commissioner Dunning asked what was the downside of this amendment.

Mr. Johnston said that there is the potential of multiple 80-foot high poles in an area that has poor wireless service, but that the cost of such poles would encourage adjacent property owners to share the usage of a pole and limit how many poles would actually be built.

Mr. Russell said that he agreed with Mr. Johnston and that there could not be a conversion of such poles for commercial use without a Special Use review by the Commission and the Board of Supervisors.

Commissioner Wade said he was concerned what the impact of such a pole would have on the value of an adjacent property.

Mr. Russell said these poles are usually necessitated by an abundance of trees on a property and such trees would screen any pole. Further, he said that such poles would not be any higher than needed because of the additional cost of the foundation for taller poles.

Commissioner McKay said that he has an antenna, like what would be placed on one of these poles, and it is located on his silo in order to get above his trees.

Commissioner Steinmetz observed that the technology for such wireless service will evolve quickly and therefore should be a sunset clause on these amendments so that they are reviewed and revised in the future. He said that while these poles are necessary today, they might not be necessary tomorrow.

The Vice-Chair opened the public hearing.

Richard Lewis, a Clarke County resident, said that he had a consulting business located in a rural area of the County and that he needed such wireless service in order to have the consistency and speed necessary for successful operations. He encouraged the Commission to adopt the amendments to provide for high-speed wireless service as there are multiple technologies that could take advantage of such service.

Commissioner Thuss said there was not a sunset clause applied to wind mill regulations and he would prefer there be no specific time limit, just a review at a future date, as the cost of removing these poles would be costly if they were no longer allowed.

Commissioner McKay said any existing poles would be grandfathered after the effective date of a sunset clause, so he did not think that would be a problem.

Commissioner Wade said a sunset clause was a good idea but there may be enforcement issues.

Commissioner Kreider said he objected to the idea of an 80-foot pole on a neighbor's property, that it would diminish the value of adjacent properties, and it would affect views.

Commissioner McFillen asked when the Comprehensive Plan would be updated.

Mr. Johnston said that it should be completed some time next year.

Commissioner McKay said these facilities are not a luxury, but a necessity in today's business environment.

Commissioner Dunning asked if there was sufficient expertise on the Commission to fully and adequately review these changes.

The Vice-Chair said that the Commission, committee and staff had reviewed the amendment in detail for the past two months.

Commissioner McKay said that people would not pay for poles that are taller than they need to be.

Commissioner McFillen said that people interested in buying property in rural areas in Clarke will need to have this service, but they will not want to look at something ugly, so they will locate the poles in obscure locations. He said he did not think there would be many of these poles and there will be trees to screen them.

Commissioner Dunning said he supported the idea of a sunset provision for this amendment.

Commissioner Thuss said a sunset period of just a few years would be unfair if the poles have to be removed.

The Vice-Chair said the poles would be grandfathered and would not have to be taken down.

Hearing no further public comment, the Vice-Chair closed the public hearing and called for a motion.

The Commission voted unanimously to recommend to the Board of Supervisors the approval of this request on condition that the amendments will be automatically rescinded five years after approval of the Board of Supervisors.

Yes: Brumback, Caldwell, Dunning, Kreider, McFillen (moved), McKay, Nelson (seconded),
Thuss, and Wade

No: No one

Absent: Ohrstrom

TEXT AMENDMENT –PUBLIC HEARING

**The Clarke County Planning Commission will consider the amendment of the:
County Zoning Ordinance:**

Section 6-E, *Procedures for Site Plans*, so as to change the number and size of site plans submitted with an initial application and after approval, require the submission of digital copies, and establish standards for such digital submissions; and

County Subdivision Ordinance:

Section 4, *Procedures for Preliminary Subdivision Plat Application and Submission of Record Plat*, so as to change the number and size of plats submitted, require the submission of digital copies, and establish standards for such digital submissions. TA-11-06

Mr. Johnston and Alison Teetor, County Natural Resources Planner, explained this request, stating it will eliminate the need for County staff to enter mapping data manually. Ms. Teetor recommended that a requirement that “A minimum of two property corners shall be identified by x/y coordinates in order to “tie to” existing GIS layers” be added to the requirements for digital files.

The Vice-Chair opened the public hearing.

Stuart Dunn, a licensed surveyor practicing and residing in the County, stated that this would be something most surveyors should be able to do without significant additional cost. He said this amendment had been forwarded to the local Surveyor Association and that the association supported the establishment of the standards so that they could serve as a model for other jurisdictions in the area.

Commissioner Kreider asked what would be the additional cost.

Mr. Dunn said approximately \$500 to \$1000 dollars.

Mr. Johnston said the County is currently absorbing this cost when it does a manual transfer of map data and that this cost should be the responsibility of the property owner.

Commissioner Dunning asked if this would be good for the County.

Mr. Dunn said “yes”.

Hearing no further public comment, the Vice-Chair closed the public hearing and called for a motion.

The Commission voted unanimously to recommend to the Board of Supervisors the approval of this request with the change recommended by Ms. Teetor.

Yes: Brumback, Caldwell, Dunning (moved), Kreider, McFillen, McKay, Nelson, Thuss, and Wade (seconded)

No: No one

Absent: Ohrstrom

TEXT AMENDMENT – PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance:

Section 1, *Authority, Purposes and Intent, Planning Commission, and Zoning Administrator*, and Section 7, *Appeals, Variance and Zoning Map Interpretations*, so as to shift the sections regarding modifications that can be approved by the Zoning Administrator from Section 1 to Section 7; Sections 3-A-1-d, 3-A-2-d, 3-A-d, *Maximum Height of All Structures in the AOC, FOC, and Rural Residential Zoning Districts* and

Section 4-H-3, *Height Regulations Exceptions*, so as to shift from Section 4-H-3 to Section 3-A the 25-foot height limit for structures on parcels narrower than 75 feet;

Section 3-C-2, *Supplementary Regulations for Uses Various Districts* and

Section 4-H-3, *Height Regulations Exceptions*, so as to shift from Section 4-H-3 to Section 3-C-2 the 18 foot, six-inch height limit for Gasoline Pump Canopies:

Section 4-H, *Height Regulations Exceptions*, so as to shift from Section 4-H-3-c to 4-H-3-a the height exception for parapet walls and to increase the exception by 6 inches to 42 inches to be consistent with the Building Code:

Section 4-J-6, *Exception process to requirement that off-street parking be located on the same lot as principal use*, so as to change the entity that could approve such an exception from the Board of Zoning Appeals to the Planning Commission when it reviews a property's site plan;

Section 9-B-106, *definition of the term 'Livestock'*, so as to define livestock as hoofed animals and the order of animals that includes ostriches and emus. TA-11-07

Mr. Johnston explained these changes, stating they were primarily editorial in nature and in one item providing greater consistency with the Building Code allowing parapets up to 42 inches above the height limit, instead of the current limit of 36 inches, as this additional 6 inches is required if mechanical equipment is closer than 10 feet to the edge of the building.

The Vice-Chair opened the public hearing.

Hearing no public comment, the Vice-Chair closed the public hearing and called for a motion.

The Commission voted unanimously to recommend to the Board of Supervisors the approval of this request.

Yes: Brumback, Caldwell, Dunning, Kreider, McFillen, McKay, Nelson (seconded), Thuss (moved), and Wade

No: No one

Absent: Ohrstrom

TEXT AMENDMENT – DISCUSSION

Amendments to:

- the Highway Commercial Zoning District,
 - the Design Criteria for the Historic Access Corridor Overlay District outside of the boundaries of the Berryville Area Plan, and
 - the Improvements and Minimum Standards for Site Plans
- to provide for and encourage a traditional access pattern of commercial development (with a grid network of streets and buildings directly fronting on these streets) for non-vehicle oriented businesses in the commercially zoned areas at the Waterloo and Double Tollgate intersections.

Mr. Johnston explained the draft proposed changes as outlined in the staff report and suggested the amendments be referred to a Planning Commission committee for further discussion. The Vice-Chair referred the matter to the Site Plan Committee (Brumback, Caldwell, McFillen, Nelson). Subsequently, the Committee set a meeting date of Thursday, September 15 at 3:30 pm in the Government Center.

Board/Committee Reports

Board of Supervisors

Commissioner Dunning said there were no planning related items on the last Board agenda.

Sanitary Authority

Nothing to report.

Board of Septic & Well Appeals

Nothing to report.

Board of Zoning Appeals

Nothing to report.

Historic Preservation Commission

Nothing to report.

Conservation Easement Authority

No report was made with the absence of the Chair

Staff Reports

Natural Resource Activities

No report

Enforcement Officer

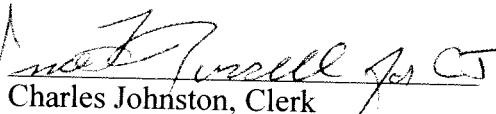
See staff report

Ms. Olin's progress reports for 2011 August 1 thru August 25, 2011 were reviewed.

There being no further discussion, the meeting was adjourned at 11:30 a.m. until the next regular meeting of the Commission on 2011 October 7.



Anne Caldwell, Vice Chair


Charles Johnston, Clerk

Minutes prepared by Charles Johnston, Clerk to the Commission